IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6560 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANNABEN NIRANJAN M. MEHTA - Petitioner(s)

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR & 3 - Respondent(s)

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Appearance :

MR PV NANAVATI for Petitioner(s)
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioner Pannaben, wife of Niranjan Maganlal Mehta, has challenged the order dated 14.11.84 passed by the Competent Authority under the provisions of the Urban Land (Ceiling &

Regulation) Act, 1976 (hereinafter to be referred to as "the said Act") as confirmed by the order dated 6th October, 1987 passed by the Urban Land Tribunal.

2. This petition was earlier disposed of by the learned single Judge on 12.5.1999 holding that the petition has abated and the impugned orders passed against the petitioner also stand abated. Against the said order passed by the learned single Judge, Letters Patent Appeal was filed by the State Government. It may be noted that the petitioner Pannaben expired on 6.8.99. In Letters Patent Appeal No.993 of 2001 filed by the State Government, heirs of deceased Pannaben were brought on record. The said LPA filed by the State Government came to be allowed by the Division Bench of this Court as per the judgment dated 29.7.2004. By the said order, the Division Bench was pleased to set aside the order passed by the learned single Judge and the proceedings were remanded for fresh consideration. Accordingly, the present petition has come up for final hearing before this Court. Since heirs of deceased Pannaben who expired during the pendency of the LPA have already been ordered to be brought on record in the Letters Patent Appeal, learned advocate for the petitioner is permitted to amend the cause title of the

petition also accordingly.

3. Husband of the petitioner-Pannaben who is joined as respondent No.4 herein had filed a declaration as required under section 6 of the said Act declaring certain properties held by him as urban lands. In his declaration, he had also included the land held by the petitioner in Vanshree Cooperative Housing Society, Theltej, being plot No.10 thereof. The husband of the petitioner was heard all throughout by the Competent Authority with respect to the total holding of the family. After hearing him and following the procedure as laid down under section 8 of the said Act, the Competent Authority passed order dated 14.11.84 whereby it was held that the declarant held total land of 1685 sq. meters for the purpose of the said Act. After deducting an area of 1000 sq. meters to be retained by the land-holder, 685 sq. meters of land was declared as excess vacant land. The said excess vacant land was directed to be taken possession of from the Theltej property which was in the name of the petitioner.

4. Respondent No.4 herein, husband of the petitioner appealed against the order passed by the Competent Authority. The said appeal was, however, rejected by

the Urban Land Tribunal by the order dated 6th October, 1987. No further steps were taken by the husband of the petitioner or the petitioner herself. The State Government issued notifications under section 10(1) and 10(3) of the said Act and also issued notice under section 10(5) of the said Act on 27th June 1990 seeking to take possession of the excess vacant land. Notice under section 10(5) of the said Act dated 27th June 1990 is produced by the petitioner herself on record while filing the petition. The petitioner has also produced a notice issued by the Competent Authority to respondent No.4 on 27th June 1990 under section 11(4) of the said Act calling upon him to participate in the proceedings for determination of compensation for the land in question on 19.7.90. It was at that stage that the petitioner filed the present petition on or around 10th August 1990. Learned single Judge of this Court while issuing rule, directed that the parties should maintain status qua as on 3rd September, 1990 till further orders.

4.1As noted earlier, the petition was once disposed of by the learned single Judge of this Court. However, upon LPA filed by the State Government, proceedings have been remanded for fresh disposal.

5.Additional affidavit in support of the petition has been filed by the heirs of deceased Pannaben. It is primarily contended that the possession of the land in question has not been taken. Reliance is sought to be placed on the decision of the Hon'ble Supreme Court in the case of Mira Gupta v. State of West Bengal, AIR 1992 SC 1597. It is stated that plot No.10 of Vanshri Co-operative Housing Society is a plot which is part of the Cooperative society constituted under the Gujarat Cooperative Societies Act, 1961. It is stated that the petitioner is enjoying the possession of the land in question.

6.The State Government has filed an affidavit in reply dated 1st October, 2005. In the said reply-affidavit, it is contended, inter alia, that the husband of the petitioner Pannaben, respondent No.4 herein had filled in form as required under section 6(1) of the said Act wherein he had declared the following details about his holdings:

Sr. No.	Name of the village	Survey No.	Area	Remarks
1	Rajpur-Hirpur, Tal: City	Final Plot No.73 of T.P.Scheme No.4	739 sq. meters	-
2	Thaltej, Ta: City	Plot No.10 of 46	829 sq. mtrs.	-

Sr. No.	Name of the village	Survey No.	Area	Remarks
3	Khadia	City Sur. No.2695 Building 2682 building	18 Sq. meter 99 sq. meter.	-
4	Paldi	89	635 sq. meters	
			2320.00 Total sq. meters.	

It is contended that respondent No.4 had preferred appeal before the Tribunal. The petitioner therefore cannot challenge the order passed by the Competent Authority or the Urban Land Tribunal.

6.1It is further contended that draft statement as required under section 8(1) of the said Act was prepared on 16.8.82 and the same was also served upon the original land holder. He submitted his objections on 3.8.82 and 14.2.1983. It is further stated that after taking into consideration the objections of the original land holder, the Competent Authority passed order under section 8(4) of the said Act on 14.11.84 declaring a total area of 685 of sq. meters of land as excess vacant land situated at Theltej bearing survey No.46. The appeal of the original land holder was rejected by the Tribunal on 6.10.87.

6.2It is further stated that notification under section

10(1) of the said Act was issued on 7.12.88 and the same was published in the official gazette on 19.1.89. Notification under section 10(3)of the said Act was issued on 24.4.89 and the same was also published in the official gazette on 24.4.89. It is stated that upon publication of the notification under section 10(3) of the said Act, the land vested in the Government free from all encumbrances and therefore the original land holder and all other persons ceased to have any ownership right over the said land. Notice under section 10(5) of the said Act was issued to the land holder on 27.6.90 requiring him to hand over the possession of the excess vacant land. Notice was served on him on 7.7.90. The possession of the land in question was taken over by the authority on 28.8.90 and panchnama to that effect was drawn. A copy of the panchnama dated 28.8.90 is produced on record.

6.3It is further stated that the Tribunal vide its order dated 6.10.87 declared that the possession of the excess vacant land should be taken from final plot No.73 of Rajpur-Hirpur instead of survey No.46 of Theltej. However, after the decision of the Tribunal, the original land holder, respondent No.4 herein by letter dated 15.1.88 suggested to the authorities that

he is willing to hand over possession of plot No.10 at survey No.46 of Theltej. Thereafter, once again respondent No.4 addressed a letter dated 10.5.88 to the Competent Authority indicating his desire that possession of Theltej land be taken as excess vacant land. A copy of the said letter dated 10.5.88 is produced on record by the State Government. In his application, it was clearly stated that on account of the order passed by the Tribunal a conflicting situation has arisen. He therefore requested the Competent Authority that he may be permitted to sell the land situated at Rajpur-Hirpur whereas possession be taken of survey No.46 of Thaltej.

7. From the above pleadings on record, learned advocate appearing for both sides have made detailed submissions.

8. Learned advocate for the petitioner submitted that the petitioner Pannaben was not given any opportunity of being heard at all stages by the Competent Authority and the Urban Land Tribunal or by the State Government before taking actual possession of the land in question. In fact, it is contended that the possession of the land in question was never taken by the State

Government and the panchnama drawn cannot be relied upon. It is contended that the land in question is a self-acquired property of the petitioner-Pannaben and the same could not have been taken possession of on a declaration by her husband before the Competent Authority. In any case, the petitioner was required to be heard before passing any orders adverse to her.

8.1 It is further contended that the possession of the land in question was never actually taken. He submitted that right till the petition was disposed of by this Court earlier, the State Government has not filed any reply indicating that the possession was taken. He submitted that it was only after the remand that the State Government has filed an affidavit in this petition in which it was contended that the possession was already taken in the year 1990.

8.2 It was also submitted that the plot in question forms part of a cooperative housing society and the allotment made to the petitioner cannot be construed as her holding for the purpose of the said Act and the same can never be a subject matter of proceedings under the said Act.

8.3 In support of his contentions, learned advocate Shri

Nanavati placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Maharasthra v. B./E. Billimoria, (2003) 7 SCC 336.

9. Learned AGP Shri Gori appearing for the respondents opposed the petition. He submitted that the Competent Authority after considering all aspects of the matter came to the conclusion that the original land-holder, husband of the petitioner, who is respondent No.4 herein was holding land in excess of the ceiling limit and declaration to that effect was made declaring a total area of 685 sq. meters of land as excess vacant land. This order was upheld by the Tribunal. Since no further appeal was carried, the State Government issued notifications under section 10(1) of the said Act and under section 10(3) of the said Act. Subsequently, notice under section 10(5) of the said Act for taking possession was also issued. Ultimately, possession of the land in question was taken over in presence of panchas on 28.8.90.

10. The first question that calls for consideration is whether the possession of the land in question was taken over by the Government or not. In this regard, the State Government has filed a detailed affidavit giving details of the steps taken. As required under

section 10 (1) of the said Act, notification was issued on 7.12.88 and the same was published in the official gazette on 19.1.89. Notification under section 10(3) of the said Act was issued and published on 24.4.89. Notice under section 10(5) of the said Act was issued to respondent No.4 on 27.6.90 and the same was served on 7.7.90. Thereafter, in presence of panchas, possession of the land in question was taken on 28.8.90. Panchnama drawn to that effect has been produced on record.

11. It would thus appear that after following the procedure required under the law, possession of the land in question was taken over by the State Government before the petitioner preferred the present petition. The petitioner herself had produced the notice under section 10(5) of the said Act along with the petition itself. The petitioner had also produced the notice under section 11(4) of the said Act along with the petition. The above averments made by the State Government in the affidavit in reply have not been controverted as no affidavit in rejoinder has been filed by the petitioner.

12. In the decision in the case of M/s.Larsen and Toubro Ltd. v. State of Gujarat, AIR 1998 SC 1608, the

Hon'ble Supreme Court while considering the effect of the State Government taking possession of the land in presence of panchas made the following observations:-

> “13. High Court held that actual physical possession of the land subject matter of the acquisition proceeding was not handed over to the appellant while it was the contention of the appellant as well as the State Government that possession of the land was handed over to L& T Ltd. on July 5, 1989. At the time the possession was taken over a Panchanama was prepared duly witnessed by two farmers of the Village Magdalla and signed by the Circle Officer evidencing handling over of possession and also by M.H. Adhikari an officer of the L & T Ltd. for taking over possession. The possession receipt of the same date duly signed by the Circle Officer and the officer of the L & T Ltd was given. L & T Ltd thus took possession of the land in presence of the panchas. Panchnama recites that both the witnesses (panchas) had been intimated in advance by Mamlatdar, Choryasi and that possession of the concerned land that day taken over in their presence by the Circle Officer and that the land was an open spot and there was no construction or crops grown therein. Possession of the land was taken over along with the trees standing thereon. As noted above, possession was thereafter delivered to the representative of the L & T Ltd at that time itself. In the High Court it was contended that no actual physical possession of the land had been taken. The petitioners filed affidavits of the Panchas who had signed the panchanama. In these affidavits they stated that they were called to the office of the Panchayat and that their signatures were obtained on blank papers and that they had not gone to the site and that neither the landlord was present nor the actual possession was delivered to the acquiring body. Read with these affidavits High Court noticed from the recitation in the Panchanama that it was nowhere mentioned that the panchas had gone to the site from the office of the Panchayat. It was not disputed that in the revenue records it was L & T Ltd who was shown in possession of the land. Affidavits of the Panchas filed in the High Court which contained statements contrary to what ws recorded in

> the Panchanama and against the revenue entires are quite meaningless and in our opinion High Court unnecessarily put undue reliance on the same. High Court could not convert itself into a revenue Court and hold that in spite of the Panchnama and the revenue records actual physical possession of the acquired land had not been handed over to the acquiring body. High Court, in our opinion, has not correctly analysed the two judgments of this Court in Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab, (1996) 4 SCC 212: (1996 AIR SCW 1296) and Balwant Narayan Bhagde v. M. D. Bhagwat, (1976) 1 SCC 700 : (AIR 1975 SC 1767) to come to the conclusion that actual physical possession of the and was not taken over by the State."

For want of any additional material on record, it is not possible to ignore the notifications and notice issued by the State Government under section 10 of the said Act and the panchnama of possession having been taken over which is also produced on record.

13. The learned advocate for the petitioner has also contended that the authorities could not have taken possession of the plot situated at Survey No.46 of Theltej since it was not indicated by her husband. This submission, however, is not borne out from the record. In the affidavit in reply, the State Government has clearly indicated that the husband of the petitioner had clearly stated that the possession be taken from survey No.46 of Theltej and documents in

this regard have been produced on record. The petitioner has not denied any of these averments. In fact, husband of the petitioner had indicated that other plot of Rajpur-Hirpur be released from the clutches of the provisions of the said Act and instead of possession of survey No.46 of Theltej be taken. This contention of the petitioner, therefore, is rejected.

14.This brings me to the other aspects of the matter. As noted earlier, learned advocate for the petitioner has contended that the orders under challenge suffered on account of breach of principles of natural justice since the petitioner whose land was at stake was not heard. In this regard, it is necessary to advert to certain statutory provisions.

15.Section 2(f) of the said Act defines the term “family”. The same provides that in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children. Clause (f) of section 2 reads as follows:

> “2(f) “family” in relation to a person means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor

children.

Explanation : For the purpose of this clause, “minor” means a person who has not completed his or her age of eighteen years.”

15.1Term “person” has been defined in clause (i) of section 2. The same includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. The said section reads as follows:

“2(i) “person” includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not.”

14.2Section 3 of the said Act provides that except as otherwise provided under the Act, on and from the commencement of the Act no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies. Section 3 reads as follows:

“3. Persons not entitled to hold vacant land in excess of the ceiling limit. Except as otherwise provided in this Act, on and from the commencement of the Act no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies under sub-section (2) of Sec.1.”.

15.2Section 4 of the said Act prescribes ceiling limit. Sub-section (1) of section 4 of the said Act provides that subject to the other provisions of the said section, in case of every person, the ceiling limit shall be 500 sq. meters where vacant land is situated in an urban agglomeration falling within category A specified in Schedule I, 1000 sq. meters for land falling within category B, 1500 sq. meters for land falling within category C and 2000 sq. meters for land falling within category D specified in Schedule I.

15.3Sub-section (1) of section 6 of the said Act requires every person holding vacant land in excess of the ceiling limit at the commencement of the Act to file statement before the Competent Authority having jurisdiction specifying the location, extent and value and such other particulars as may be prescribed of all vacant lands and also to specify the vacant lands within the ceiling limit which he desires to retain.

16.From the combined reading of the above statutory provisions, it can be seen that under section 6 of the said Act, no person is entitled to hold any vacant land in excess of the ceiling limit on and from the commencement of the said Act. Ceiling limit has been prescribed in sub-section (1) of section 4 of the said

Act and the limit is attached to every person. Sub-section (1) of section 6 of the said Act requires every person holding vacant land in excess of ceiling limit to make a declaration as prescribed. Thus at all stages, reference is to a person. The term “person” has been defined, as noted earlier, in clause (i) of section 2 of the said Act. The term includes a “family”. In turn the term “family” has been defined in clause (f) of section 2 and family in relation to a person, means the individual, the wife, or husband, as the case may be, of such individual and their unmarried minor children.

17.Therefore, for the purpose of the said Act and in particular for the purpose of sections 3, 4 and 6 of the said Act, husband of the petitioner and the petitioner herself were “person”. If any one of them was holding any land in excess of ceiling limit, declaration in this regard had to be made. Clause (b) of sub-section (4) of section 6 of the said Act further provides that in the case of family, the statement under the said section shall be filed by the husband or wife and where the husband or wife is absent from India or is mentally incapacitated from attending to his or her affairs, by the husband or wife who is not

so absent or mentally incapacitated and where both the husband and the wife are absent from India or are mentally incapacitated from attending to their affairs, by any other person competent to act on behalf of the husband or wife or both.

18. In terms of the above-mentioned provisions, husband of the petitioner was required to and rightly filed declaration before the Competent Authority giving full details of the land held by him along with the land held by his wife. Thus, for the purpose of processing of the said declaration, husband of the petitioner and the petitioner herself were one common person. The Competent Authority processed such a declaration made by the husband of the petitioner which was a declaration for and on behalf of the family. This form was processed, objections were invited and final order thereon passed. At all these stages, the husband of the petitioner actively participated in the proceedings before the Competent Authority. The petitioner made no grievance, if she had any, about the exclusive participation of her husband in this regard. Nowhere in the petition, the petitioner has stated that she had a strained relation with her husband and that her husband had duped her by declaring the land held by her as one

that the Authority can acquire. The petitioner at no stage made any attempt to present herself before the Authorities nor in the present petition the petitioner has made any grievance about the stand of her husband. Ultimately when the competent authority passed the order in the year 1984 declaring 685 sq. meters of land of the family as excess vacant land, the husband of the petitioner appealed against it. The appeal came to be rejected in the year 1987 by the Urban Land Tribunal. The petitioner made no grievance about these aspects of the matter. Neither in law nor in the facts of the present case, I find that the petitioner can make any grievance that the orders passed by the Competent Authority or the Urban Land Tribunal were without her participation. In terms of the provisions contained in the said Act, her husband had made a declaration which included the land held by the family i.e. One held by the husband of the petitioner as well as one held by the petitioner herself. Under sub-section (4) of section 6 of the said Act, the husband of the petitioner had rightly filed a declaration as required under sub-section (1) of section 6 of the said Act. The said declaration was processed with full participation of respondent No.4. The petitioner,

therefore, cannot make a grievance that the entire process was completed without hearing the petitioner.

19.As noted, reliance was placed on the decision of the Hon'ble Supreme Court in the case of State of Maharashtra v. B.E. Billimoria. The facts arising in the said case were totally different. It is a case where the land was jointly held by two person who formed an association of persons. It was in that background that the Hon'ble Supreme Court observed that only the share of the individual concerned and not the entire size of the plot has to be taken into consideration for the purpose of the said Act and in absence of evidence to the contrary, both persons would be presumed to be owners of equal shares in the plot. I see no application of the ratio laid down in the said decision to the facts of the present case since the lands held in the present case are by the family which as per the provisions of the said Act are required to be clubbed together for the purpose of ascertaining the holding of a person.

20.At the fag end of the argument, a grievance was made that the land in question forms part of a co-operative

housing society and the same should therefore be exempt from the provisions of the said Act. Prima facie, this contention appears to be contrary to the provisions contained in sub-section (8) of section 4 of the said Act, which reads as follows:

> "4 (8) Where a person, being a member of a housing co-operative society registered or deemed to be registered under any law for the time being in force, holds vacant land allotted to him by such society then the extent of land so held shall also be taken into account in calculating the extent of vacant land held by such person."

Secondly, no such case was set up by the petitioner before the authorities below. For want of necessary particulars, such a contention cannot be permitted to be raised for the first time before this Court. The exact nature of the cooperative society, whether the same was duly registered or not, etc. are questions of fact which cannot be gone into at this belated stage when the land has been vested in the Government free from all encumbrances as far back in the year 1990 and when the possession thereof was already taken by the Government as found herein-above.

21. In the result, I find no merit in the petition and the same is hereby rejected. Rule is discharged. Interim

relief is vacated.

(Akil Kureshi, J.)

(vjn)